TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 183.

MERRITT COX AND J. C. WHITLOCK, PLAINTIFFS IN ERROR,

vs.

THE NATIONAL BANK OF THE STATE OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED SEPTEMBER 25, 1877.

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INDEX.

	Original.	Print.
Petition	1	1
Protest	6	3
Bill of exchange	7	3
Summons and return	8	4
Merritt Cox's answer	9	4
J. C. Whitlock's answer	16	7
J. C. Whitlock's amended answer	25	10
Merritt Cox's amended answer	26	11
Verdict and judgment	27	11
Bill of exceptions	28	12
Appeal bond	40	17
Clerk's certificate	42	17
Writ of error	43	17
Citation	44	18
Assignment of errors	45	19

1 Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the Federal court hall, in the city of Louisville, on Monday, the 2nd day of October, A. D. 1876.

Present, the honorable Bland Ballard, judge of the United States for the Kentucky district.

Caption.

THE NATIONAL BANK OF THE STATE OF NEW York, plaintiff,
vs.
MERRITT COX, WM. F. COX, WM. COWAN, AND J. C. Whitlock, defendants.

Be it remembered that heretofore, to wit, on the 25th day of April, 1876, came the plaintiff, by Barret & Brown, its attorneys, and filed in the clerk's office of said court its petition against the above named defendants, which is as follows:

Petition.

In the circuit court of the United States for the circuit and district of Kentucky.

THE NATIONAL BANK OF THE STATE OF NEW York, plaintiff,
vs.
MERRITT COX, WM. F. COX, WM. COWAN (the said W. F. Cox and Wm. Cowan composing the firm of and trading under the name and style of Cox and Cowan), J. C. Whitlock, def'ts. } Petition.

2 The plaintiff, the National Bank of the State of New York, states that it is a resident and citizen of the State of New York, within the terms and meaning of the laws of the United States, and that it is a banking corporation, created, existing, and acting under and by authority of an act of the Congress of the United States, approved 3rd July, 1865, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," and the several acts amendatory thereof.

This plaintiff*s* is, by the said acts of Congress, authorized and empowered to sue and be sued, to contract and be contracted with, to buy and sell promissory notes and bills of exchange, to discount bills of exchange, and to do and perform all things connected with or incident to a general banking business.

The defendants Merritt Cox, Wm. F. Cox, Wm. Cowan, and J. C. Whitlock are, and each of them is, and at the several times hereinafter mentioned each of them was, a citizen and resident of the State of Kentucky, and of the district of Kentucky.

The defendants W. F. Cox and Wm. Cowan were, at the several times hereinafter mentioned, partners in trade, within the State of Kentucky, under the firm name and style of Cox & Cowan.

This pl'ff further says, that on the 3rd day of August, 1875, the

3 defendant, Merritt Cox, drew his certain bill of exchange dated as of said date at Hopkinsville, Ky., addressed to the defendants W. F. Cox and Wm. Cowan, by their said firm name of Cox & Cowan, at New York, N. Y., wherein and whereby he ordered and requested the said Cox & Cowan (a firm composed as aforesaid) to pay to the order of the defendant J. C. Whitlock the sum of five thousand ($5,000.00) dollars eighty days after said date, for value received, and to charge the same to account of renewing a bill for same amount and names due 3rd August, 1875.

The said bill of exchange was signed by the defendant Merritt Cox, with his proper hand, and being so signed and made was by the defendants Cox & Cowan (a firm composed of the defendants W. F. Cox and Wm. Cowan, as aforesaid) accepted in writing by them, as their said firm name upon and across the face thereof, and was by the defendant J. C. Whitlock, the payee thereof, endorsed "Pay to the order of Edward M. Wright & Co., of New York City," over his proper signature, and delivered to Edward M. Wright & Co., of New York City, for valuable consideration, all of which was before the maturity of said bill of exchange, whereby the said bill of exchange became and was before maturity thereof the property of the said Edward M. Wright &

4 Co. and the defendants Cox & Cowan became and were bound to pay the same, at maturity, to said Edward M. Wright & Co. And afterwards, and before maturity of said bill of exchange, the same was by the said Edward M. Wright & Co. endorsed and delivered for valuable consideration to this plaintiff, and this plaintiff discounted the same before maturity, whereby this pl'ff became, before maturity thereof, the holder and owner of said bill of exchange, and have ever since been, and the defendants Cox & Cowan aforesaid became and were bound to pay the same at maturity to this plaintiff.

And afterwards, on and at the day of the maturity of said bill of exchange, this plaintiff caused the said bill to be placed in the hands of one J. L. Slosson, a notary public in and for the city of New York, duly commissioned and qualified as such for proper and legal presentment and demand of payment; and the said notary, on said day, did present said bill of exchange at various places in the city of New York, and made diligent and careful search for the said defendants, acceptors thereof, to wit, Cox & Cowan, and for their place of business, of them or either of them, save the office of Edward M. Wright & Co., in said city, which he was informed and believed was and is the only

5 place of business of the said acceptors, Cox & Cowan, or of either W. F. Cox or Wm. Cowan, in said city. And the said notary did thereupon then and there present said bill of exchange at said office, to the person in charge thereof, and demanded payment thereof, which was refused.

And thereupon the said notary did duly and properly protest said bill of exchange for non-payment, as also the drawer, endorsers, and acceptors thereof, of which the defendants and each of them had due notice.

The said original bill of exchange is herewith filed and is made part hereof. The said notorial protest of said bill of exchange is herewith filed and is made part hereof.

No part of said bill of exchange has been paid, but the whole is past due and owing to this pl'ff.

Plaintiff says that by the laws of the State of New York, at the time of the drawing of said bill of exchange and continuously ever since the legal rate of interest in said State was and is the rate of seven (7) per

centum per annum, and that pl'ffs is entitled to recover interest at said rate on said bill of exchange from and after its maturity.

Wherefore plaintiff prays for judgment against the defendants, Merritt Cox, W. F. Cox, Wm. Cowan, and J. C. Whitlock, in the sum of five thousand ($5,000) dollars, with interest thereon from the 25th Oct., 1875, till paid at the rate of 7 per centum per annum, and for costs and all proper relief.

BARRET & BROWN,
For Plaintiff.

6 The notorial protest above referred to is as follows:

Protest.

UNITED STATES OF AMERICA,
State of New York, ss:

I, J. Lawrence Slosson, notary public, duly admitted and sworn, dwelling in the city of New York, do hereby certify that on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and seventy-five, at request of the holders thereof, the original bill hereto annexed was presented by me at various places in said city, and I then made diligent and careful search and inquiry for the acceptors thereof, to wit, Cox & Cowan and their place of business, but I could not find them or either of them, nor any place of business of them or either of them, save the place of Edward M. Wright & Co. in said city, which I was then informed and believed, and now believe, was and is the only office or place of business of the said acceptors, Cox & Cowan, or either of them, in the city of New York, whereupon I presented said bill at said office and demanded payment thereof, which was refused.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawers, acceptors and endorsers of the said bill as against all others whom it doth or may concern, for exchange, re-exchange, and
7 all costs, charges, damages and interest already incurred, and hereafter to be incurred, for want of payment of the said bill.

In testimonium veritatis.

J. LAWRENCE SLOSSON,
Notary Public.

The bill of exchange above referred to is as follows:

Bill of exchange.

$5,000.] HOPKINSVILLE, KY.,
August 3rd, 1875.

Eighty days after date pay to the order of J. C. Whitlock five thousand dollars, value received, and charge to account, renewing a bill for same am't and names due Aug't 3rd, 1875.

MERRITT & COX.

To Mess. COX & COWAN,
New York, N. Y.

The endorsement on the face of said bill is as follows:

Accepted.

COX & COWAN.

The endorsement on the back of said bill is as follows:

Pay to the order of Edward M. Wright & Co., of New York City.
J. C. WHITLOCK.

EDWARD M. WRIGHT & CO.

Upon the foregoing petition the following process issued, to wit:

8 *Summons & marshal return.*

The President of the United States of America to the marshal of the Kentucky district, greeting:

You are commanded to summon Merritt Cox, W. F. Cox, Wm. Cowan, & J. C. Whitlock to answer on the first day of the next October term of the circuit court of the United States for the district of Kentucky, to be held at the city of Louisville, a petition against them in said court by the National Bank of the State of New York, and warn them that upon their failure to answer the petition will be taken for confessed, or they will be proceeded against for contempt, and you will make due return of this summons on the first day of the next term of said court.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Louisville, in the said district, this 25th day of April, in the year of our Lord 1876, and of our Independence the 100th.

[L. S.] SAM'L B. CRAIL, *C. C. C. K. D.*,
By HENRY F. CASSIN, *Deputy.*

Upon which summons the marshal made the following return:

Executed this summons on within named def'ts, Merritt Cox, W. F. Cox, Wm. Cowan, and J. C. Whitlock, by delivering to each of them a copy thereof this 26th day of April, 1876.

POLK CAUSLER, *S. B.*,
For ELI H. MURRAY, *U. S. M.*

9 And afterwards, on the 16th day of August, 1876, came the defendants Merritt Cox and J. C. Whitlock, by Walter Evans, their attorney, and filed in the clerk's office their separate answer herein.

The answer of Merritt Cox, above referred to, is as follows:

Merritt Cox's answer.

In the circuit court of the United States for the district of Kentucky.

THE NATIONAL BANK OF THE STATE OF NEW York, plaintiff,
vs.
W. F. COX & WM. COWAN, PARTNERS LATELY as Cox & Cowan, Merritt Cox & J. C. Whitlock, defendants.

Separate answer of Merritt Cox.

The defendant Merritt Cox, for separate answer to the plaintiff's petition in the above styled action, states that it is true this defendant made and executed the bill of exchange sued on herein for $5,000, bearing date the 3rd day of August, 1875, as drawer thereof. He said he

drew said bill on his co-defendants Cox & Cowan, who accepted the same, in favor of his co-defendant J. C. Whitlock. He denies, however, that he has any knowledge or information thereof sufficient to form a belief, 1st, as to whether the plaintiffs paid a valuable consideration for said bill, 2nd, as to the truth of the statement by the plaintiffs in their petition that they became the holders of said bill before its maturity, or, 3rd, as to the truth of the statement by the plaintiffs in their petition that the said bill was indorsed to them before its maturity.

This defendant denies that the notary public mentioned in the plaintiff's petition, or any one for him, or any other person, made diligent inquiry or search for the said acceptors of said bill, to wit, said Cox & Cowan, or either of them, at or before the maturity of said bill. He denies that said notary or any other person for him, at or before the maturity of said bill, made diligent search and inquiry for the office or place of business of said acceptors or for the office or place of business of either of them. If said notary made any such search or inquiry, he learned of the residence and place of business of said acceptors and of each of them, and that the same were in Christian County, Kentucky.

This defendant denies that W. F. Cox & Wm. Cowan or Cox & Cowan, or either of them, ever had an office, place of business, or counting room in New York City or State, & he denies that either of them has in fact been in said city or State since the 1st day of August, 1875. He denies that the office or place of business of Edward M. Wright & Co., of New York (which firm indorsed said bill to plaintiffs), was ever in any way the office, place of business, or residence of said W. F. Cox or William Cowan, or either of them, nor of said Cox & Cowan, as a partnership, firm, or otherwise, though the said Edward M. Wright & Co. were among the factors employed by the said Cox & Cowan in the transaction of business in said city of New York in 1874 & 1875.

This defendant denies that the said notary public or the plaintiffs, or either of them, had any right to make demand of payment of said bill at the office or place of business of Edward M. Wright & Co., in New York City, New York, or at any other place in said city or State.

He denies that said bill of exchange sued on was payable at any place in New York City or State, or elsewhere than in Christian County, Kentucky.

He denies that any demand for payment of said bill was, on the day of its maturity, made of or upon the acceptors thereof, said Cox & Cowan, or of or upon either of them, in person or otherwise. He denies that any demand for payment of said bill was, on the day of its maturity, made at the place of business of the said acceptors, Cox & Cowan, or at the place of business of either of them.

He denies that any demand for the payment of said bill was, on the day of its maturity, made at the residence of said acceptors, or at the residence of either of them.

He denies that any demand whatever was made in any way upon said acceptors or upon either of *of* them for payment of said bill, at or on the day of the maturity thereof, but, on the contrary, this defendant says that the plaintiffs and all other holders of said bill, at its maturity, utterly failed and neglected to make any sort of demand of payment of said bill of or upon the acceptors thereof, said Cox & Cowan, or of or upon either of them.

He denies that he ever received or that there was ever given to him any notice of the dishonor of said bill, or of the failure of said acceptors

and each of them to pay the same at maturity. He denies that he was ever notified of any demand of payment of said bill on the day of its maturity, of or upon the acceptors thereof, or of or upon either of them, or of a failure or refusal by them or either of them to pay the same on such demand or otherwise.

He denies that he ever had or received notice of the protest of said bill made by the notary mentioned in plaintiff's petition, as described therein, and he says said protest was unwarranted and impertinent. He says there was no other protest of said bill.

This defendant, further answering, states that the said bill of exchange sued on herein was executed and drawn in the city of Hopkinsville, Ky., by this defendant, on Cox & Cowan, in renewal of another bill for the same amount, and was addressed to Cox & Cowan, New York, N. Y., but for what reason it was so addressed, if there was
13 any reason therefor, this defendant does not know, but supposes it was simply a copying of the original bill by the person who filled up the blank for said bill, this person being Mr. J. A. Wallace, cashier of the Bank of Hopkinsville, Kentucky, who had no interest in said bill, and said bank had no interest in it nor control over it.

On the day said bill was drawn by this defendant the same was accepted by said Cox & Cowan, and it was so accepted in said city of Hopkinsville, Ky., and not elsewhere, as plaintiffs knew when they took said bill, and on the same day and also in said city of Hopkinsville, said bill was indorsed by the defendant J. C. Whitlock to Edward M. Wright & Co., of New York, and on the same day and also in the said city of Hopkinsville, Ky., the said bill so indorsed was delivered to the said Edward M. Wright & Co., who then had full notice of all the said facts pertaining to the execution of said bill.

This defendant says that the said W. F. Cox, one of Cox & Cowan then, viz, on the 3rd day of August, 1875, and at all times since has resided in Christian County, Ky., a short distance from Hopkinsville, which facts the plaintiffs and also said Edward M. Wright &
14 Co. knew when they severally took said bill and when the same matured and at all intermediate times. Said W. F. Cox never resided in New York City or State, and never had a place of business in either.

Defendant says that said Wm. Cowan then, viz, on the 3rd day of August, 1875, and at all times since has resided in said city of Hopkinsville, Kentucky, which facts the plaintiffs and also said Edward M. Wright & Co. knew when they severally took said bill & when the same matured, and at all intermediate times. Said Cowan never resided in New York City or State and never had a place of business in either.

Each member of the said firm of Edward M. Wright & Co., to wit, Edward M. Wright, John B. Duer, & Gouveneur Morris, jr., resided in the said city of New York, or at least had their place of business there, and all of them were well known to plaintiffs both before and after the said Edward M. Wright & Co. indorsed the said bill to the plaintiffs (which endorsement to plaintiffs was made in New York), and the plaintiffs could at any time by the use of the most ordinary diligence and inquiry have learned of the residence and place of business of said Cox & Cowan and each of them, both of which & both of whom were perfectly well known to said Edward M. Wright & Co., as the plaintiffs knew at the time.

15 This defendant and also his co-defendant, J. C. Whitlock, then and now, as they also have for at least fifteen years past, resided

in said Christian County, Ky., and Newstead was and is the post-office of each.

Defendant also states that the said Cox & Cowan had their place of business in Hopkinsville, in Christian County, Ky., and not elsewhere, at the time the plaintiffs took said bill and also when it matured, and they had neither residence nor place of business in New York City or State then nor at any time, & these facts were well known to the plaintiffs and also to said Edward M. Wright & Co. at the times they severally took said bill and when it matured and at all intermediate times.

This defendant is advised to say and does say that by the law of the State of New York, where a bill of exchange is indorsed to a holder as collateral security for a pre-existing debt due to the indorsee, such indorsee thereof is not a holder of such bill for value, but holds the same subject to all defenses and equities which could be urged against the indorser who passed the bill to such indorsee.

Defendant insists that by reason of the facts herein stated and
16 by reason of the negligence of the plaintiffs in failing to make demand of payment of said bill at its maturity, of & from the acceptors thereof or either of them, & by reason of their failure to given otice to this defendant of the dishonor of said bill, he is released and discharged from all liability to pay the same.

Wherefore this defendant, having fully answered, prays to be dismissed hence with his costs & with all other proper relief.

WALTER EVANS,
Counsel for Defendant Merritt Cox.

STATE OF KENTUCKY,
County of Christian:

Merritt Cox says he believes the statements made in the foregoing answer are true.

MERRITT COX.

Sworn to before me by the above-named Merritt Cox this 31st day of July, 1876.

J. I. LANDERS,
U. S. Commissioner.

The answer of J. C. Whitlock above referred to is as follows, to wit:

J. C. Whitlock's answer.

In the circuit court of the United States for the district of Kentucky:

NATIONAL BANK OF THE STATE OF NEW YORK, plaintiffs,
vs.
W. F. COX & WM. COWAN, LATE PART-
17 ners as Cox & Cowan, Merritt Cox, & J. C. Whitlock, defendants.

Separate answer of J. C. Whitlock.

The defendants, J. C. Whitlock, for separate answer to the plaintiff's petition in the above-styled action, states that it is true this defendant did indorse the bill sued on. He denies, however, that he has any knowl-

edge or information thereof sufficient to form a belief: 1st, as to whether the plaintiff's paid a valuable consideration for said bill; 2nd, as to the truth of the statement by the plaintiffs in their petition that they became the holders of said bill before its maturity; or 3rd, as to the truth of the statement by the plaintiffs in their petition that the said bill was indorsed to them before its maturity.

This defendant denies that the notary public mentioned in the plaintiff's petition, or any one for him, or any other person made diligent inquiry or search for the said acceptors of said bill, to wit, said Cox & Cowan, or for either of them, at or before the maturity of said bill.

He denies that said notary, or any other person for him, at or before the maturity of said bill, made diligent search and inquiry for the office or place of business of said acceptors, or for the office or place of
18 business of either of them. If said notary made any such search or inquiry he learned of the residence & of the place of business of said acceptors, and of each of them, and that the same were in Christian County, Kentucky.

The defendant denies that W. F. Cox & Wm. Cowan, or Cox & Cowan, or either of them, ever had an office, place of business or counting-room in New York City or State; & he denies that either of them has, in fact, been in said city or State since the first day of August, 1875. He denies that the office or place of business of Edward M. Wright & Co., of New York, (which firm indorsed said bill to the plaintiffs), was ever in any way the office, place of business, or residence of said W. F. Cox or Wm. Cowan, or of either of them, nor of said Cox & Cowan as a partnership, firm, or otherwise, though the said Edward M. Wright & Co. were among the factors employed by the said Cox & Cowan in the transaction of business in said city & State of New York in 1874 & 1875.

This defendant denies that said notary public or the plaintiffs, or either of them, had any right to make demand of payment of said bill at the office or place of business of Edward M. Wright & Co., in New York City or State, or at any other place in said city or State.

He denies that said bill of exchange sued on was payable at any
19 place in New York City or State, or elsewhere than in Christian County, Kentucky.

He denies that any demand for payment of said bill was, on the day of its maturity, made of or upon the acceptors thereof, said Cox & Cowan, or of or upon either of them, in person or otherwise.

He denies that any demand for payment of said bill was, on the day of its maturity, made at the place of business of the said acceptors, Cox & Cowan, or at the place of business of either of them.

He denies that any demand for the payment of said bill was on the day of its maturity made at the residence of said acceptors or at the residence of either of them.

He denies that any demand whatever was made in any way upon said acceptors, or upon either of them, for payment of said bill, at or on the day of the maturity thereof, but on the contrary this defendant says that the plaintiffs and all other holders of said bill at its maturity utterly failed and neglected to make any demand whatever of payment said bill of or upon the acceptors thereof, said Cox & Cowan, or of or upon either of them.

He denies that he ever received, or that there was ever given to him any notice of the dishonor of said bill or of the failure of said acceptors, and of each of them, to pay the same at maturity.

20 He denies that he was ever notified of any demand of payment of said bill on the day of its maturity of or upon the acceptors

thereof, or of or upon either of them, or of a failure or refusal by them, or either of them, to pay the same on such demand or otherwise.

He denies that he ever had or received notice of the protest of said bill, except notice of the protest made by the said notary in New York, as set out in plaintiff's petition, which protest this defendant avers was unwarranted by law and altogether impertinent.

No other protest of said bill was ever made.

This defendant, further answering, states that the said bill of exchange sued on herein was executed and drawn in the city of Hopkinsville, Ky., by Merritt Cox on Cox & Cowan, in renewal of another bill for the same amount, and was addressed to Cox & Cowan, New York, N. Y., but for what reason it was so addressed, if there was any reason therefor, this defendant does not know, but suppose' it was simply a copying of the original bill by the person who filled up the blank for said bill, said person being Mr. J. A. Wallace, cashier of the Bank of Hopkinsville,
Ky., who had no interest in said bill, and said bank had no inter-
21 est in it nor control over it. On the day said bill was drawn the same was accepted by said Cox & Cowan, and it was so accepted by them in said city of Hopkinsville, & not elsewhere, as was well known to plaintiffs when they took said bill; and on the same day, and also in said city of Hopkinsville, said bill was indorsed by the defendant to Edward M. Wright & Co., of New York, and on the same day and also in the said city of Hopkinsville, Ky., the said bill so indorsed was delivered to the said Wright & Co., who then had full knowledge of all the said facts pertaining to the execution of said bill, & which knowledge they soon afterwards imparted to plaintiffs.

This defendant says that the said W. F. Cox, one of Cox & Cowan then, viz, on the 3rd day of August, 1875, and at all times since, has resided in Christian County, Kentucky, a short distance from Hopkinsville, which facts the plaintiffs and also said Edward M. Wright & Co. knew when they severally took said bill and when the same matured and at all intermediate times. Said W. F. Cox never resided in New York City or State, and never had a place of business in either. Defendants says
that said Wm. Cowan then, viz, on the 3rd day of August, 1875,
22 & at all times since has resided in said city of Hopkinsville, Ky., which facts the plaintiffs, & also said Edw'd M. Wright & Co., knew when they severally took said bill & when the same matured, & at all intermediate times. Said Cowan never resided in New York City or State & never had a place of business in either. Each member of the firm of Edward M. Wright & Co., to wit, Edward M. Wright, John B. Duer, & Gauveneur Morris, jr., resided in the said city of New York, or at least had their place of business there, and all of them were well known to plaintiffs both before and after the said Edward M. Wright & Co. indorsed the said bill to the plaintiffs (which indorsement to plaintiffs was made in New York), and the plaintiffs could at any time, by the use of the most ordinary diligence & enquiry, have learned of the residence & place of business of said Cox & Cowan, & each of them, both of which & both of whom were perfectly well known to said Wright & Co., as the plaintiffs knew at the time.

This defendant & also his co-defendant, Merritt Cox, do now & have at all times for the last fifteen years resided in Christian County, Ky., & the post-office address of each is Newstead, in said county.

Defendant also states that the said Cox & Cowan had their place of
business in Hopkinsville & in Christian County, Ky., & not else-
23 where, at the time the plaintiffs took said bill & also when the same matured, & they had neither residence nor place of busi-

ness in New York City or State then, nor at any time, & these facts were known to the plaintiffs & also to said Edw'd M. Wright & Co. at the time they severally took said bill & when the same matured, & at all intermediate times.

This defendant is advised to say, & does say, by the law of the State of New York, where a bill of exchange is indorsed to a holder as collateral security for a pre-existing debt due to the endorsee, such endorsee thereof is not a holder of such bill for value, but holds the same subject to all defenses & equities which could be urged against the endorser who passed the bill to such endorsee.

Defendant insists that by reason of the facts herein stated & by reason of the negligence of the plaintiffs in failing to make demand of payment of said bill at its maturity of & from the acceptors thereof, or either of them, & by reason of their failure to give notice to this defendant of the dishonor of said bill, he is released and discharged from all liability to pay the same.

Wherefore this defendant prays to be dismissed hence with his costs & with all other proper relief.

WALTER EVANS,
Counsel for Def't J. C. Whitlock.

24 STATE OF KENTUCKY,
County of Christian:

J. C. Whitlock says he believes the statements made in the foregoing answer are true.

J. C. WHITLOCK.

Sworn to before me by the above-named J. C. Whitlock this 1st day of August, 1876.

J. I. LANDERS,
U. S. Com'r, K'y Dist.

And at another term of our said court held, for its October term, 1876, to wit, on Tuesday, December 12th, 1876, came the plaintiff, by John Mason Brown, its attorney; came also the defendants, by Walter Evans, their attorney. The defendants J. C. Whitlock and Merritt Cox, by leave of court, filed their separate amended answers herein. The defendants, by their attorney, filed their exceptions to parts of the deposition of J. D. Slosson. Came also the plaintiff, by its attorney, and filed its exceptions to the deposition of W. F. Cox and William Cowan.

Thereupon came a jury, to wit, J. K. Goodloe, St. John Bayle & D. W. Armstrong, who were elected, tried, and sworn well and truly to try the issue joined.

The evidence and arguments of counsel were concluded, and, there not being time for the court to deliver its instructions to the jury to-day, time is taken until to-morrow.

25 The amended answer of J. C. Whitlock above referred to is as follows, to wit:

Am'd answer of J. C. Whitlock.

Circuit court of the United States for the district of Kentucky.

NATIONAL BANK OF THE STATE OF NEW YORK, plaintiffs,
vs.
COX & COWAN, MERRIT, COX, & J. C. WHITlock, defendants.

The defendant J. C. Whittock, for amendment to his answer filed

herein, says that in said answer, after stating in substance that the bill sued on was drawn by Merrit Cox and accepted by Cox & Cowan, indorsed by himself, all at Hopkinsville, Ky.; he also stated on the 4th page of said answer as filed that the bill sued on was thereupon on the same day and at the same place delivered to E lward M. Wright & Co.

This defendant, for amendment, now says that the original bill, of which the one in suit was a renewal, was at the maturity thereof owned and held by the plaintiffs, & that the same was renewed with their consent, & for the purpose the said original bill was sent by them to Hopkinsville, Ky., and after the renewal was effected the bill in suit was delivered to them and to said Wright & Co. in Hopkinsville after the said acceptance & indorsement.

26 Defendant says he did not learn that the plaintiffs then held said paper, & that they had sent it to Hopkinsville for renewal, until after his answer was filed and the deposition of E. M. Wright was taken herein. He prays as in his original answer.

WALTER EVANS,
Att'y for J. Whitlock.

The amended answer of Merritt Cox above referred to is as follows, to wit:

Am'd answer of Merritt Cox.

Circuit court of the United States for the district of Kentucky.

NATIONAL BANK OF THE STATE OF NEW YORK, plaintiffs,
vs.
COX & COWAN, MERRITT COX, & J. C. WHITLOCK, defendants.

The defendant, Merritt Cox, for amendment to his answer filed herein says, that in said answer, after stating in substance that the bill sued on was drawn by himself and accepted by Cox & Cowan and indorsed by J. C. Whitlock, all at Hopkinsville, Ky., he also stated on the 4th page of said answer as filed, that the bill sued on was thereupon on the same day & at the same time & place delivered to Edward M. Wright & Co.

This defendant, for amendment, now says that the original bill of which the one in suit was a renewal was at the maturity thereof

27 owned and held by the plaintiffs, and that the same was renewed with their consent, & for the purpose the said original bill was sent by them to Hopkinsville, Ky., and after the renewal was effected the bill in suit was delivered to them & to said Wright & Co. in Hopkinsville after the said acceptance and endorsement.

Defendant says he did not learn that the plaintiffs then held said paper & that they had sent it to Hopkinsville for renewal until after his answer was filed and the deposition of E. M. Wright was taken herein. He prays as in his original answer.

WALTER EVANS,
Att'y for Merritt Cox.

Verdict & judgment.

And on another day of our said term of our said court, to wit, on Wednesday, December 13th, 1876, came again the parties by their attorneys; came also the jury empanneled and sworn herein.

The instructions of the court having been delivered, the jury retired to consider of their verdict and returned into court the following verdict, to wit:

"We of the jury find for the plaintiffs the debt in the petition mentioned, with interest from the 25th day of October, 1875.

ST. JOHN BAYLE,
Foreman."

28 It is therefore considered by the court that the plaintiff, the National Bank of the State of New York, recover of the defendants, Merritt Cox, Wm. F. Cox, Wm. Cowan, and J. C. Whitlock, the sum of five thousand dollars, with interest thereon at the rate of six per centum per annum from the 25th day of October, 1875, until paid; also its costs herein expended.

Thereupon the defendant's Merritt Cox & J. C. Whitlock, by their attorney, tendered their bill of exceptions herein, which is signed and sealed by the court and ordered to be entered of record, and which is as follows:

Bill of exceptions.

NATIONAL BANK STATE OF NEW YORK
vs.
MERRITT COX ET AL.

Be it remembered that at the trial of this cause before the court and a jury the plaintiffs to sustain the issue on their part offered and read in evidence to the jury the bill of exchange sued on in this action (see bill of exchange on page 7); and they also read the protest of said by the notary J. L. Slosson (see protest on page 6); and also offered in evidence by competent witnesses facts tending to show that the notary entrusted with the said bill made reasonable and
29 diligent inquiry for the acceptors and their place of business in New York City, at the place or places frequented by them when in said city and could not, after such inquiry, find them or any place of business of them or either of them, and then demanded payment on the day of maturity in business hours at the place so frequented by them when in the city of New York, and that payment of said bill was then and there refused; that they caused inquiry to be made by the said notary public, J. L. Slosson, in New York, on the 25th or 26th day of October, 1875, of E. M. Wright, a resident of New York City, N. Y., and one of the firm of E. M. Wright & Co., and who indorsed said bill of exchange to plaintiffs, as to the post-office address, respectively, of said Merritt Cox and J. C. Whitlock, and that said notary was then informed by said Wright that the post-office address of each of said defendants was Hopkinsville, Kentucky; and that said notary, on the 26th day of October, 1875, mailed notices of protest of said bill to each of said defendants at Hopkinsville, Kentucky, but there was no evidence introduced which tended to show that the plaintiffs or any one for them at any time made any other inquiries for the post-office address
30 of either or both of said defendants.

And the said defendants Merritt Cox and J. C. Whitlock, to sustain the issues on their part, offered and gave in evidence before the jury by competent witnesses facts tending to prove that the said bill of exchange was drawn by Merritt Cox, accepted by Cox & Cowan

and indorsed by J. C. Whitlock, all in the city of Hopkinsville, Ky., and it was there delivered to G. V. Thompson, to whom the bill of which the one in suit was a renewal had been sent by E. M. Wright & Co., who had indorsed the same to plaintiffs as collateral security, and had received it after maturity from the plaintiffs and holders for the purpose of having it renewed. That said Thompson sent the bill in suit to said Wright & Co., who immediately delivered it to and informed them that it had been executed and accepted in Kentucky; that at the time of the execution and acceptance of said bill, and at the time of its maturity, the acceptors thereof, W. F. Cox and Wm. Cowan, composing the partnership-firm of Cox & Cowan, each resided in Hopkinsville, Christian , Ky., and had their place of business there and not elsewhere; that the plaintiffs, when they took said bill and when it was executed and when it matured, were informed and had knowledge that the said residence and place of business of said Cox & Cowan and each of them was in said city of Hopkinsville, Ky., at the times aforesaid, to wit, when the said bill was executed, and when it matured, and at all intermediate times, and that
31 said bill had been executed and accepted there.

That there was no presentment for payment of said bill nor demand of payment of same to or upon the said acceptors, or either of them, in person or at their said residence in Ky., or at their said place of business in Kentucky, on the day of the maturity of said bill, nor at any time; that there was no agreement to pay said bill in New York except as shown on the face of said bill; that the time of the execution of said bill and at its maturity the post-office address of each of said defendants Merritt Cox and J. C. Whitlock was Newstead, Ky., had so been for five years previously, and not Hopkinsville Ky.; that the original bill of which the one in suit was a renewal was at the time of renewal held by the plaintiffs, that it was sent as aforesaid to G. V. Thompson, of Hopkinsville, Ky., for the purpose of having it renewed; that at that time and when the bill matured said Thompson was informed and knew that the post-office address of each of said defendants was Newstead, Kentucky, and not Hopkinsville, Kentucky; that mail facilities between Hopkinsville, Ky., and New York, N. Y., were ample and daily, and that a letter in course of transmission from one of said places to the other in the mail occupied & took about three days; that G. V. Thompson at the times aforesaid resided in Hopkinsville, Ky.; that there
32 was at said times telegraphic communication between said two cities; that said E. M. Wright & Co. were factors and commission merchants of New York City, N. Y., and in that capacity did business there for the said firm of Cox & Cowan, and in the course thereof said bill was received; that each of said firm of Cox & Cowan during the course of said business and up to June, 1875, on different occasions visited New York on business, and while there wrote letters and received letters at the office of E. M. Wright & Co., and looked after the business intrusted to the hands of their said factors, and did the like with other factors in their employment in said city at the same time.

And the plaintiffs, further to sustain the issues on their behalf, introduced by competent witnesses before the jury facts tending to show that the said original bill was sent to G. V. Thompson by said E. M. Wright & Co., and that said Wright & Co. corresponded with said Thompson in their own names, disclosing no sort of agency for the plaintiffs; that said Thompson procured the renewal of the bill at their request & by their instruction and sent it to them when obtained; that he had no communication with the plaintiffs, and was never at any time in any respect their agent, and did not inform them nor said Wright & Co. of the post

office address of either of said defendants and was not inquired
33 of as to either, and thereafter Thompson never had the bill in his possession or any connection therewith.

Whereupon the court charged and instructed the jury as follows:

"The court instructs the jury that the bill of exchange sued on being addressed to Cox & Cowan, New York, N. Y., is in law payable in the city of New York, notwithstanding the plaintiffs may have known, at and before the making and acceptance and endorsement and maturity of the same, that the acceptors, Cox & Cowan, each actually resided at Hopkinsville, Kentucky, at each of said times."

And to the giving of this instruction the said defendants, and each of them, then and there, in the presence of the jury, objected and excepted.

And the court further instructed the jury:

"That if they believed from the evidence that the notary intrusted with said bill of exchange on the day of the maturity thereof made reasonable and diligent inquiry for the acceptors and their place of business in New York City, at the place or places frequented by them when in said city, and could not, after such inquiry, find them, or any place of business of them or either of them, and then demanded
34 payment on the day of maturity, in business hours, at the place so frequented by them, in the city of New York, then such demand was a sufficient demand of payment."

To this instruction and to the giving of the same by the court each of said defendants then and there in the presence of the jury excepted.

And the court further instructed the jury:

"That if the plaintiffs at the time of the protest of said bill of exchange did not know the post-office address of the drawer, Merritt Cox, and the indorser, J. C. Whitlock, and the notary protesting the bill did, at the time of protesting, make inquiry as to their several post-office addresses of E. M. Wright & Co., who had assigned the bill to plaintiff and who were the correspondents of the acceptors, and who in the judgment of the notary were likely to be informed as to such post-office addresses and who professed to know them, and did inform the notary what the said addresses were, to wit, Hopkinsville, Ky., and on the day next after the making of said protest the notary did transmit by mail, post-paid, to the drawer and indorser, notices of said protest, addressed to each at his post-office, was by the notary, so ascertained, such notice of protest is good to bind the drawer and endorser."

35 To this instruction and to the giving of the instruction by the court each of said defendants then and there in the presence of the jury excepted.

And the said defendants Merritt Cox & J. C. Whitlock each asked and moved the court to instruct the jury as follows:

No. 1. On motion of the counsel for the defendants Merritt Cox & J. C. Whitlock, the court instructs the jury, if they believe from the testimony that the bill in suit was given in renewal of one by the same parties & of like tenor & amount held by the plaintiffs, and was drawn and accepted in Hopkinsville, Ky., & there indorsed by J. C. Whitlock, the payee, and delivered to G. V. Thompson, as agent for the holders, and if they believe also that the plaintiffs were at the time the holders, then the plaintiffs are chargeable with knowledge of such facts in regard to the post-office addresses of each of said defendants as the jury may believe from the evidence were then known to the said Thomp-

son, and which might have been ascertained by the plaintiffs from him on enquiry.

The court said this instruction is refused, because there is no evidence tending to show that Thompson was, at any time or in anything, agent of the plaintiffs, or that he had any connection with the bill
36 except to procure its renewal at the request of Wright & Co.

No. 2. On motion of counsel for the defendants Merritt Cox & J. C. Whitlock, the court instructs the jury that the term place of business, in reference to the acceptors of the bill in suit, means only the regular settled place of business of the said acceptors or one of them, and not the merely casual and temporary use of the house of another person away from the homes of the said acceptors. The jury would not be authorized to find that the house of Edward M. Wright & Co., of New York, New York, was the place of business of said acceptors or one of them, unless they believe from the evidence that the said acceptors, or one of them at least, regularly and permanently transacted business there, not merely occasionally when absent from home.

The court, in refusing this instruction, said it was abstract; that however correct the definition of "place of business" might be, to give such a definition to the jury in this case would tend only to mislead them.

No. 3. On motion of counsel for the defendants Merritt Cox & J. C. Whitlock, the court instructs the jury that the acceptance of Cox & Cowan of the bill of exchange here in suit was a general acceptance, which made the said bill payable at no particular place, and that in order to charge the said defendants in this action it is necessary
37 that the plaintiffs should show by proof to the satisfaction of the jury that they on the day of the maturity of said bill, allowing three days of grace, caused the said bill to be presented for payment to said Cox & Cowan, or to one of them in person, or caused the said bill to be presented at the residence of said Cox & Cowan, or at the residence of one of them, or caused the said bill to be presented at the place of business of the said Cox & Cowan, or at the place of business of one of them, and that such presentment was accompanied by a request for the payment of said bill.

No. 4. On motion of the defendants Merritt Cox & J. C. Whitlock, by their counsel, the court instructs the jury that if they believe from the evidence that the plaintiffs, at the maturity of said bill, and also at the time of its execution and delivery, had information of the residence and place of business of the said acceptors & of each of them, and that said residence and place of business were in Hopkinsville, Christian County, Ky., then, in order to charge the said defendants in this action, the plaintiffs must show a presentment of said bill for payment, and a demand of payment of the same on the day of its maturity, allowing three days of grace, to and upon the said acceptors or to and upon one of
38 them in person, or else a presentment of said bill for payment and a demand of payment of the same at the residence or place of business of said acceptors, or at the residence or place of business of one of them.

No. 5. On motion of counsel for the defendants Merritt Cox & J. C. Whitlock, the court instructs the jury that if they believe from the testimony the plaintiffs made no effort until the 25th or 26th day of October, 1875, to learn of the post-office address of said defendants and then only made inquiry on one of those days in New York City, New York, of one person resident there, the plaintiffs did not use such diligence as they should have used to ascertain such post-office address; and if by

reason of such lack of diligence they failed to ascertain the post-office address of said Cox & Whitlock, then the jury should find for said defendants, unless they further believe from the testimony that the notary, J. L. Slosson, mailed the notice of protest of said bill to said defendants at their actual and proper post-office.

The court, in refusing this instruction, said there would be no necessity of making inquiry of more than one person if that person was likely to know and actually professed to know the residences of the respective parties.

[SEAL.] BLAND BALLARD.

The court, acting on each separately, refused to give each and all
39 of said instructions so move and asked for by the said defendants as above set forth, and to the refusal of the court to give each and all of said above-set out instructions so asked by them the said defendants and each of them then and there in the presence of the jury excepted, and so except to the refusal of the court to give each of said instructions.

But the court, after refusing the said instruction ma'ked No. 1, above set forth, and asked for by the said defendants, instructed the jury as follows:

"If the jury believe from the testimony that the original bill was pledged to the plaintiffs by E. M. Wright & Co., and that they, at the maturity thereof, delivered the same to E. M. Wright & Co. for renewal, and that the latter sent the same to G. V. Thompson, of Hopkinsville, Ky., who, after procuring such renewal, sent the bill in suit to said Wright & Co., and that Thompson had no other connection with said bill, then the plaintiffs are not chargeable with the knowledge had by said Thompson of the post-office addresses of the said drawer and indorser of said bill."

To the giving of which instruction by the court each of said
40 defendants Merritt Cox & J. C. Whitlock then and there in the presence of the jury excepted and objected.

And because these matters do not sufficiently appear of record, the said two defendants pray that this their bill of exceptions may be signed and sealed and made of record, which is accordingly done.

[SEAL.] BLAND BALLARD.

Thereupon came W. F. Cox and William Cowan, by Walter Evans, their counsel, and stated in open court that they had no defense in this case, and that they would not join in the suing out of any writ of error upon judgment in this case, and it is ordered that the defendants, Merritt Cox and J. C. Whitlock be allowed to prosecute a writ of error herein without joining the said W. F. Cox & William Cowan or either of them.

And on another day of said term of our said court, to wit, on Thursday, February 1st, 1877, came the defendants Merritt Cox and J. C. Whitlock, by Walter Evans, their attorney, and tendered their appeal bond herein, which is approved and filed.

The appeal bond is as follows, to wit:

Appeal bond.

41 Circuit court of the United States, sixth circuit and district of Kentucky.

MERRITT COX & J. C. WHITLOCK, PLAINTIFFS in error,
against
THE NATIONAL BANK OF THE STATE OF NEW York, defendants in error.

Know all men by these presents that we, Merritt Cox & J. C. Whitlock, and E. F. Morris, their surety, are held and firmly bound unto the above-named National Bank of the State of New York in the sum of ten thousand dollars, to paid to the said National Bank of the State of New York, to which payment, well and truly to be made, we bind ourselves, and each of aus, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 15th day of January, A. D. 1877.

Whereas the above-named Merritt Cox & J. C. Whitlock hath prosecuted a writ of error to the Supreme Court of the United States for the sixth circuit and district of Kentucky, to reverse the judgment rendered in the circuit court of the United States for the district of Kentucky, settting at Louisville, against the said Merritt Cox & J. C. Whitlock, in the case of the National Bank of the State of New York against Merritt Cox, Cox & Cowan, and J. C. Whitlock:

42 Now, therefore, the condition of this obligation is such that if the above-named Merritt Cox & J. C Whitlock shall prosecute their writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

MERRITT COX. [L. S.]
J. C. WHITLOCK. [L. S.]
E. F. MORRIS. [L. S.]

Taken and acknowledged before me this 15th day of January, A. D. 1877.

J. J. LANDERS,
Com'r U. S. Cir. Court for K'y Dist., Christian County, K'y.

Certificate.

DISTRICT OF KENTUCKY:

I, Samuel B. Crail, clerk of the circuit court of the United States for the Kentucky district, at Louisville, do certify that the foregoing forty-two pages, this included, contain a true and complete transcript of the record of the proceedings had in the court in the case mentioned in the caption hereof.

In testimony whereof witness my signature and the seal of said court, at Louisville, this 21st day of Sept., 1877.

SAMUEL B. CRAIL, *Clerk*,
By HENRY F. CASSIN, *D. C.*

43 UNITED STATES OF AMERICA,
District of Kentucky, ss:

The President of the United States of America to the judges of the circuit court of the United States for the Kentucky district, greeting:

Because in the record and proceedings, and also in the rendition of

the judgment of a plea which is in the said circuit court before you, between the National Bank of the State of New York, plaintiffs, and W. F. Cox, Wm. Cowan, Merritt Cox, and J. C. Whitlock, defendants, a manifest error hath happened, to the great damage of the said Merritt Cox and J. C. Whitlock, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first day of our next October term in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said court, at Louisville, in said district, this 15th day of December, A. D. 1876, and of the Independence of the United States the 101st.

[SEAL.] SAM'L B. CRAIL, *C. C. C. K. D.*

Allowed by—

BLAND BALLARD.

44 UNITED STATES OF AMERICA,
District of Kentucky, ss:

To the National Bank of the State of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington on the 1st day of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kentucky, wherein Merritt Cox and J. C. Whitlock are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 1st day of February, in the year of our Lord 1877, and of our Independence the 101.

BLAND BALLARD.

Affiant, Walter Evans, states that he served the above citation this 1st day of February, 1877, by delivering a true copy thereof to W. F. Barrett and Jno. Mason Brown, counsel of record for the National Bank of the State of New York, in this action.

WALTER EVANS.

Sworn to this 1st day of February, 1877, by Walter Evans.

SAM'L E. CRAIL,
Clerk Cir. Ct. K. D.,
By HENRY F. CASSIN, *D. C.*

The undersigned, counsel of record for the above-named defendants in error, acknowledge & accept service of the above citation this February 1st, 1877.

BARRET & BROWN, *Att'ys.*

45 *Assignment of errors.*

Supreme Court of the United States, October term, in the year of our Lord 1877.

J. C. WHITLOCK AND MERRITT COX, PLAINTIFFS in error,
vs.
THE NATIONAL BANK OF THE STATE OF NEW York, defendants in error.

Afterwards, to wit, on the first Monday in October, in the same year, before the justices of the Supreme Court of the United States at the Capitol in the city of Washington, comes the said J. C. Whitlock & Merritt Cox by Walter Evans their attorney, and say that in the record and proceedings aforesaid in said cause there is manifest error in this, to wit:

1st. That the petition of the defendants in error aforesaid, and the matters therein contained, are not sufficient in law for the said national bank of the State of New York to have or maintain its aforesaid action thereof against the said J. C. Whitlock and Merritt Cox or either of them.

2d. There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given was given for the said national bank, and against the said Whitlock and Cox, whereas by the law of the land the said judgment ought to have been given for the said Whitlock & Cox, and against the said national bank.

46 3rd. There is also error in this, to wit, that each and every part of the instructions given to the jury by the court on the trial of said action, as appears by the record, was contrary to the law of the land.

4th. And there is also error in this, to wit, that the refusal of the court to instruct the jury on the trial of the cause in said circuit court, as moved for by the said J. C. Whitlock & Merritt Cox, and as appears from the record, was as to each instruction so moved contrary to law.

Prayer for reversal.

And the said J. C. Whitlock and Merritt Cox pray that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that they may be restored to all things which they have lost by occasion of the said judgment.

WALTER EVANS,
Attorney for J. C. Whitlock & Merritt Cox.

(Indorsement on cover:) No. 183. Merritt Cox and J. C. Whitlock, plaintiffs in error, vs. The National Bank of the State of New York. Kentucky C. C. U. S. Filed 25th September, 1877.